

**EXHIBIT “E”**

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF HAWAII

WAYNE BERRY, a Hawaii Citizen, ) CIVIL NO. 03-00385SOM  
Plaintiff, )  
vs. )  
HAWAII EXPRESS SERVICE, INC., ) - VOLUME 3 -  
et al., )  
Defendants. )

---

TRANSCRIPT OF PROCEEDINGS

The above-entitled matter came on for hearing on  
Wednesday, March 1, 2006, at 9:04 a.m., at Honolulu, Hawaii,

BEFORE: THE HONORABLE SUSAN OKI MOLLWAY  
United States District Judge

REPORTED BY: STEPHEN B. PLATT, RMR, CRR  
Official U.S. District Court Reporter

APPEARANCES: TIMOTHY J. HOGAN, ESQ.  
WESLEY W. ICHIDA, ESQ.  
Lynch Ichida Thompson Kim & Hirota  
1032 Bishop Street, Suite 1405  
Honolulu, Hawaii 96813

Attorneys for the Plaintiffs

MICHAEL E. BAUMANN, ESQ.  
DAMIAN D. CAPOZZOLA, ESQ.  
Kirkland & Ellis LLP  
777 South Figueroa Street  
Los Angeles, CA 90017

Attorneys for Defendant  
Post Confirmation trust  
for Fleming companies, Inc.

1 APPEARANCES (Continued):

2  
3  
4 LYLE S. HOSODA, ESQ.  
RAINA P.B. MEAD, ESQ.  
5 Lyle S. Hosoda & Associates, LLC  
345 Queen Street, Suite 804  
6 Honolulu, Hawaii 96813

7 Attorneys for Defendants  
Mark Dillon, Teresa Noa,  
8 Melvin Ponce, Sonia Purdy,  
Justin Fukumoto, Alfreda  
9 Waiolama and Jacqueline Rio  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

1 THE CLERK: Thank you.

2 Please be seated.

3 Please state your name and spell your first and last  
4 name.

5 THE WITNESS: Brian Christensen. B-R-I-A-N,  
6 C-H-R-I-S-T-E-N-S-E-N.

7 BRIAN CHRISTENSEN,  
8 called as a witness on behalf of the Plaintiff, having been  
9 produced and duly sworn, was examined and testified as  
10 follows:

11 DIRECT EXAMINATION

12 BY MR. HOGAN:

13 Q. Good morning, Mr. Christensen.

14 What is your job presently?

15 A. I am the president of C&S Wholesale, the Hawaii division.

16 Q. And what was your job in -- let's say April 1st 2003?

17 A. I was the president of Fleming Companies Hawaii division.

18 Q. And so would it be fair to say that you were the boss of  
19 the people that are the employee defendants here?

20 A. Yes.

21 Q. Okay.

22 And, Mr. Christensen, what was your understanding --  
23 was it your understanding that it was Fleming's intention as  
24 of April 1st, 2003 to go back to the Berry system as it was  
25 originally configured by Mr. Berry?

1 A. Yes, it was.

2 Q. Okay.

3 And, Mr. Christensen, you were at one time a  
4 defendant in this case; is that correct?

5 A. Yes.

6 Q. Was it your understanding that Fleming had agreed to  
7 indemnify you regarding Mr. Berry's claims?

8 MR. BAUMANN: Objection --

9 MR. HOSODA: Your Honor, objection. Request for  
10 side bar.

11 THE COURT: Well, I don't think it's relevant, so  
12 I'll sustain the objection on relevance grounds.

13 BY MR. HOGAN:

14 Q. Mr. Christensen, during the period after Fleming filed  
15 for bankruptcy on April 1st, 2003, did it close down any  
16 divisions, to the best of your knowledge?

17 A. I believe it did, but I'm not sure if it was on April  
18 1st.

19 Q. And I --

20 A. Sometime after that.

21 Q. And that wasn't what I was trying to imply. But during  
22 the period after April 1st, were there divisions being closed  
23 down?

24 A. I believe so.

25 Q. And was it your understanding that the product from those